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NANCY CORBIN  
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Date: July 1, 2011

To: All Licensees

Re: Important Information Regarding Changes in NRS 645A, 645B, 645E and 645F

Several bills passed during the 76<sup>th</sup> Session of the Nevada Legislature affecting all licensees. Below is a synopsis of the essential sections of each bill, separated by the affected chapters. It is imperative that you read the full enrolled text of the bills to ensure you remain in compliance with the law. There is a hyper-link embedded in each bill section which will open the reenrolled version of each bill to assist in your review:

**[Assembly Bill No. 77](#)** – effective 7/1/11 – Affects Mortgage Bankers, Mortgage Brokers, Escrow Agencies and Covered Service Providers

This bill revises provisions relating to the licensing of escrow agents and escrow agencies; revises provisions relating to a surety bond or substitute security posted by an escrow agency; revises provisions relating to disciplinary action for an escrow agency or escrow agency; establishes provision governing the arranging or servicing of loans in which an investor has an interest; requires a mortgage broker who services a loan to make certain reports; exempts certain natural persons and nonprofit organizations from statutes governing mortgage brokers and mortgage agents; revises provision relating to a surety bond posted by a mortgage broker; requires a mortgage broker to review an impound trust account annually; revises provisions relating to the renewal of a license as a mortgage banker; enacts requirements for mortgage brokers and for mortgage bankers to make the statutory schemes governing the two professions more similar; allowing disclosure of certain confidential information relating to an investigation; enacts provisions for the enforcement of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008; requires the licensing of a person who performs the services of a construction control; requires the licensing of a provider of certain additional services as a provider of covered services; revises provision relating to compensation for a provider of covered services; and increases certain administrative fines.

**NRS 645A, Escrow Agency**

- **Section 2** increases the fines from \$10,000 to more than \$25,000 for unlicensed activity under 645A.

- **Section 3** requires the designation of a qualified employee if an escrow agency is not a natural person.
- **Section 3.5** adds the definition of “construction control” to 645A as well as amending the definition of “escrow” to include the performance of the services of a construction control.
- **Section 4** requires an applicant for a license as an escrow agency or escrow agent to submit a complete set of fingerprints for natural persons and establishes timeframes for an escrow agency and escrow agent applicants to comply with requirements for licensing.
- **Section 5** reduces the timeframe for renewing a license after expiration from 1 year to 2 months.
- **Section 6** provides for the Commissioner to determine the amount of an escrow agency’s surety bond on a semi-annual basis and allows a surety bond which is used to meet the requirement of NRS 627.180 to be used to meet, in whole or in part, the escrow agency’s surety bond requirement.
- **Sections 8 and 9** revises provisions relating to the fees and costs relating to escrow agencies to include all persons subject to the provisions of 645A.
- **Sections 10-12** increases the maximum fine from \$10,000 to \$25,000 per violation of NRS 645A, any regulation adopted pursuant thereto or an order of the Commissioner and includes crimes of moral turpitude for NRS 645A license application determinations.

## **NRS 645B, Mortgage Brokers**

- **Section 17** adds the definition of “loan processor” to NRS 645B.
- **Section 18** adds the definition of “majority of the investors” to NRS 645B.
- **Section 21** requires the mortgage broker to provide to each investor one of three options pertaining to the release of certain investor information to other investors.
- **Section 22** prohibits a mortgage broker who makes or arranges a loan from requiring a private investor to participate in binding arbitration of disputes relating to a loan.
- **Section 24** requires a mortgage broker to fully disclose compensation that it will receive for the servicing of a loan in which a private investor has acquired a beneficial interest. This section also specifies certain provisions required in each servicing agreement.
- **Section 25** prohibits a mortgage broker from releasing a borrower or guarantor from personal liability for a loan unless a majority of the investors approve such a release.
- **Section 34** prohibits a mortgage broker from withholding money due the investor in order to offset money owed to the mortgage broker or to another investor unless certain conditions are satisfied.
- **Section 37** prohibits a mortgage broker from acting as a construction control with respect to money belonging to a borrower or investor.
- **Section 40.3** places conditions on a mortgage broker placing a private investor into a limited-liability company, business trust or other entity before foreclosure of the real property securing the loan. This section also requires the clarification of fees which will be paid to the mortgage broker by the limited-liability company, business trust or other entity.
- **Section 40.7** specifies conditions for assessing or collecting fees.
- **Section 42** amends NRS 645B.0125 to require a loan processor who is an independent contractor to license as a mortgage agent.

- **Section 44** provides that a natural person, or husband and wife, who lend their own money on commercial loans are not subject to licensure under NRS 645B and the SAFE Act, but subjects a natural person who offers or negotiates terms of a residential mortgage loan other than on behalf of an immediate family member of the person or if the residential mortgage loan is secured by a dwelling that is not the person's residence to licensure under NRS 645B and the SAFE Act.
- **Section 46** allows for the submission of a complete set of fingerprints as part of an application to be licensed as a mortgage broker and allows a mortgage broker to apply for a license for an office or other place of business located outside of Nevada and includes crimes of moral turpitude for NRS 645B license application determinations.
- **Sections 47 and 48** revises provisions relating to a surety bond posted by a mortgage broker and revises the amount of the bond to be based on annual loan production; annual loan production of \$20,000,000 or less requires a bond of \$50,000 and an annual loan production of more than \$20,000,000 requires a bond of \$75,000.
- **Section 50** revises mortgage broker license expiration dates from June 30 to December 31.
- **Section 51** requires a mortgage broker to submit a report of condition to NMLS.
- **Section 53** authorizes the Commissioner to disclose certain confidential information relating to an investigation under NRS 645B.
- **Section 54** revises provisions pertaining to the "change of control" increasing the notification required for notifying the Commissioner in writing of a transfer of 5 percent to 10 percent or more of the outstanding voting stock under NRS 645B 15 days prior to the transfer.
- **Section 56** requires a mortgage broker to review an impound trust account annually.
- **Section 58** revises requirements for disclosures by mortgage brokers.
- **Section 59** requires a mortgage broker to include its license number if the mortgage broker is not registered by the Registry or any identifying number issued by the Registry on each loan secured by a lien on real property for which it engages.
- **Section 60** revises provisions for a person acting or providing services of a mortgage agent.
- **Section 61** revises requirements for mortgage agent licensing to include: being employed by, or having received an offer of employment from a mortgage broker or mortgage banker; or being associated with or employed by or having received an offer of employment from a person who holds a certificate of exemption; or a loan processor who is not an employee and who is associated with or has received an offer of a contract with a mortgage broker, mortgage banker or person who holds a certificate of exemption.
- **Section 62** revises mortgage agent license expiration dates from 1 year after the date the license is issued to each year on December 31, requires a mortgage agent to renew his or her license each year through the NMLS between November 1 and December 31, and allows the Commissioner to reinstate a mortgage agent's license on or before February 28 of the following year.

#### **645E, Mortgage Bankers:**

- **Section 72** provides that a natural person, or husband and wife, lending money for investment in commercial loans are not subject to licensure under NRS 645E and the federal SAFE Act.

- **Section 75** requires a mortgage banker applicant to submit a complete set of fingerprints for natural persons; and list the business location of its corporate or home office on its application and includes crimes or moral turpitude for NRS 645E license application determinations.
- **Section 81** authorizes the Commissioner to disclose certain confidential information relating to an investigation under 645E.

**NRS 645F, Covered Service Provider, Foreclosure Consultant, Loan Modification Consultant:**

- **Section 96** amends the definition of “covered services” in connection with loan modification consultant, foreclosure consultant and covered service provider activities.
- **Section 97** amends the definition of “residence in foreclosure” in NRS 645F.370.
- **Section 101** revises provisions governing the compensation a provider of covered services may receive.
- **Section 103** increases the maximum fine from \$10,000 to \$25,000 for each violation of NRS 645F, any regulation adopted pursuant thereto or any applicable law.

**[Assembly Bill No. 308](#)** – effective 7/1/11 – Affects Covered Service Providers

This bill revises Nevada law to provide protections for homeowners consistent with the protections provided pursuant to the regulations adopted by the Federal Trade Commission.

**NRS 645F, Covered Service Provider, Foreclosure Consultant, Loan Modification Consultant:**

- **Section 2** prohibits a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant from requesting or receiving any compensation before a homeowner executes a written agreement that incorporates an offer of mortgage assistance.
- **Section 3** requires a person who performs any covered service for compensation, foreclosure consultant or a loan modification consultant to maintain certain records for not less than 24 months. It provides that such records are subject to inspection and audit by the Commissioner. It also requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to take reasonable steps to ensure that any of his or her employees or independent contractors comply with the laws and regulations governing persons who perform covered services for compensation, foreclosure consultants and loan modification consultants.
- **Section 4** requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to make certain disclosures in connection with any commercial communication relating to the provision of any covered service.
- **Section 5** requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to provide certain notices to a homeowner at the time the homeowner is presented with a written agreement incorporating an offer of mortgage assistance obtained from the homeowner’s lender or servicer.

- **Section 6** prohibits a person who knows or reasonably should know that a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant is not in compliance with the laws and regulations governing covered services from providing substantial assistance or support to the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant.

- **Section 9** prohibits a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant from making certain express or implied representations relating to the provision of covered services, including any representation that: (1) a homeowner cannot or should not contact or communicate with his or her lenders; or (2) the covered service is affiliated with or endorsed by the Federal Government, the State of Nevada or any department, agency or political subdivision thereof. It also prohibits a person who performs any covered service, a foreclosure consultant or a loan modification consultant from obtaining or attempting to obtain from a homeowner a waiver of any provision of this bill or existing law. Any such waiver is void and unenforceable. A violation of any provision of section 9 constitutes mortgage lending fraud and is punishable as a category C felony.

**Assembly Bill No. 283** – effective 6/4/11 – Affects Mortgage Brokers and Mortgage Bankers

This bill revises Nevada law to remove requirements for commercial mortgage brokers or mortgage bankers to register on the NMLS, to submit reports of condition to NMLS, to pass a test related to residential mortgage loans or to complete pre-licensing or continuing education related to residential mortgage loans.

**NRS 645B Mortgage Brokers and Mortgage Agents, 645E Mortgage Bankers (Commercial Loan Originators):**

- **Section 6** provides that a mortgage agent, mortgage banker, mortgage broker or an employee of a mortgage banker or mortgage broker is not required to register or renew with the Nationwide Mortgage Licensing System and Registry, or provide reports of financial condition to the Nationwide Mortgage Licensing System and Registry, if: (1) the person is not a residential mortgage loan originator or the supervisor of a residential mortgage loan originator; and (2) the person is not required to register pursuant to the federal Act. It also provides that such a person who voluntarily registers or renews with the Registry shall comply with all requirements of the federal Act.

- **Section 2** revises provisions governing continuing education requirements for commercial mortgage brokers who are exempt pursuant to section 6 and who have not voluntarily registered or renewed with the Registry from 10 hours of certified courses of continuing education to 5 hours, including 3 hours relating to the laws and regulations of this State and 2 hours relating to ethics.

- **Section 3** clarifies that certain investors who deposit money with a mortgage broker are exempt from criminal and civil liability for the acts or omissions of the mortgage broker.

- **Section 4** revises provisions governing continuing education requirements for commercial mortgage agents who are exempt pursuant to section 6 and who have not voluntarily registered or renewed with the Registry from 10 hours of certified courses of continuing education to 5 hours, including 3 hours relating to the laws and regulations of this State and 2 hours relating to ethics.

- **Section 5** revises provisions governing the employment of or association with a mortgage agent by a mortgage broker, mortgage banker, or person who holds a certificate of exemption.

[Assembly Bill No. 284](#) – effective 7/1/11

The bill revises provisions governing the recording of assignment of mortgage and deeds of trust; revises provisions governing the exercise of the power of sale under a deed of trust; revises provisions concerning the crimes of mortgage lending fraud and making a false representation concerning title to real property; provides civil and criminal penalties; and provides other matters properly relating thereto.

- **Section 6** describes requirements for being a trustee under a deed of trust.